

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

RECEIVED  
MAY - 6 1999

Date: MAY 3 1999

Contact Person:

ID Number:

Telephone Number:

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(4). Based on the information submitted, we have concluded that you do not qualify for exemption because your activities directly benefit [REDACTED], your founder, ([REDACTED]) and only incidentally or indirectly benefit the community as a whole.

[REDACTED] has established a statutory scheme to prescribe the requirements, limitations, and procedures for storage, collection, transportation, treatment and disposal of solid waste.

The submitted information indicates that the [REDACTED] has established various alternative ways for a company to meet its obligations under the state statutory scheme governing landfills. One of the ways these statutory requirements can be met is for a company to set up a plan to become responsible for the costs of protecting and restoring the lands, waters and airshed from present and future effects of the landfill activities. The plan requires that an owner or operator of a solid waste land disposal site demonstrate financial responsibility to cover all costs of properly closing its site and providing post-closure care for the site. The plan must satisfy the funding requirements for the conceptual "worse case" closure of a landfill.

[REDACTED] owns and operates the [REDACTED]. Pursuant to the statutory scheme it has prepared a plan to cover the costs of properly closing its site and providing post-closure care for the site. This plan has been approved by [REDACTED] and you were established by [REDACTED] to hold the funds collected pursuant to the [REDACTED] ordered by [REDACTED]. The funds you are holding will be used to protect the lands adjacent to or affected by the [REDACTED]. Your activities are controlled by your three member Board of Directors. Your [REDACTED] and another director is [REDACTED].

Re: [REDACTED]  
[REDACTED]

You have indicated that the sole source of your financial support is from [REDACTED] customer rates, which include, as a cost of doing business, an estimated yearly amount dedicated to closure and post closure costs. It appears from the submitted information that as long as [REDACTED] is an active corporation it shall determine when expenditures for closure, post-closure and corrective action are needed. Upon making this determination it shall submit claims or instructions for payment for such costs to you.

Section 501(c)(4) of the Code provides for the exemption of a civic league or organization not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. However, the regulation further provides that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

In Contracting Plumbers Cooperative Restoration Corp. v. United States, 488 F.2d 684 (2d Cir. 1973), cert. denied 419 U.S. 827 (1974), recognition of exemption under section 501(c)(4) of the Code was denied to an organization that made repairs to damaged property only if the property was damaged by its members.

Rev. Rul. 66-354, 1966-2 C.B. 207 holds that an organization established by an association of manufacturers and a labor union to receive Federal and State employment taxes which the manufacturers are required to deduct from the wages of their employees who are members of the union, and pay over the amounts so received to the appropriate tax authorities does not qualify for exemption under sections 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(9), or any other of the subsections of section 501(c) of the Code. The organization was merely insures the efficient discharge of an obligation imposed by law on its creators to pay certain Federal and State taxes.

Rev. Rul. 79-316, 1979-2 C.B. 228 holds that a nonprofit organization whose purpose is to prevent liquid spills, primarily oil spills, within a city port area and to develop a program for the containment and cleanup of liquid spills that do occur is entitled to exemption as a social welfare organization under section 501(c)(4) of the Code. In this situation services are equally available to members and nonmembers and both members and nonmembers are charged on the same basis for the cleanup services rendered.

Although membership in such an organization enables certain of the members to meet part of the requirements for the necessary state licensing of their facilities and to make required showings of financial responsibility, by preventing and cleaning up liquid spills the organization is primarily engaged in activities designed to benefit all inhabitants of the community served by it. Therefore, any benefits to members can properly be characterized as incidental to the primary activity of the organization.

The information you have submitted establishes that [REDACTED] requires the owners of landfills to be financially responsible for the potential costs of closing down a landfill. The statutory scheme controlling these obligations permits a landfill owner to meet its obligations by establishing a fund to ensure that the necessary financial resources for all costs of properly closing the site and providing post-closure care for the site will be available. You were set up by [REDACTED] to meet its



Re: [REDACTED]  
[REDACTED]

statutory obligations in this regard. Two of the members of your three person board of directors are [REDACTED].

We have reviewed this information and have determined that you are controlled by [REDACTED] and that your primary activity is to enable that company to meet its statutorily mandated obligations. Therefore, we have concluded that your activities primarily benefit [REDACTED] and only incidentally benefit the general public. Unlike the organization described in Rev. Rul. 79-316, supra, you do not provide services to everyone in the community. You more resemble the plumbers association which was the subject of litigation in the Contracting Plumbers Cooperative Restoration Corp. v. United States, supra, in that you only assist your founder in meeting obligations imposed upon him by reason of the nature of the business he has elected to carry on. Similarly you are not greatly distinguishable from the organization described in Rev. Rul. 66-354, supra, where the organization merely received the Federal and State employment taxes which the manufacturers were required to deduct from the wages of their employees and transfer the funds to the appropriate tax authorities. We also note that you are apparently controlled by individuals with an economic interest in [REDACTED] and have indicated that you may compensate your officers, one of which appears to be the [REDACTED], for service he renders to you.

We recognize that the public will benefit by reason of having the landfill cleaned up at minimal cost to [REDACTED]. However, [REDACTED] is the immediate and primary beneficiary of your activities. Establishing a trust was merely a way to satisfy the obligations the state imposed on [REDACTED] to permit it to continue to carry on its business. Accordingly, as previously stated any benefit to the public is greatly outweighed by the benefit [REDACTED] receives.

Accordingly, as previously stated we have concluded that you do not qualify for recognition of exemption under section 501(c)(4) of the Code. Contributions to you are not deductible and you are required to file Corporate Income Tax Returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio EP/EO key district office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, EP/EO Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service  
[REDACTED]  
[REDACTED]

1111 Constitution Ave, N.W.  
Washington, D.C. 20224

Re: ~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

(signed) Garland A. Carter

Garland A. Carter  
Chief Exempt Organizations  
Technical Branch 2